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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF BLACK
MOUNTAIN SEWER
CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT
AND PROPERTY AND FOR
INCREASES IN ITS RATES AND
CHARGES FOR UTILITY SERVICES
BASED THEREON.

No. SW-02361A-05-0657

Arizona Corporation Commission
DOCKETED

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THE TOWN OF CAREFREE'S REPLY BRIEF

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1 **I. INTRODUCTION**

2 Through the pre-filed testimony of its former manager and opening statements
3 during the hearing in this matter, Black Mountain Sewer Corporation ("BMSC") denied
4 having an odor problem, but claimed instead that it had an "odor complaint problem."
5 (*Ex. A-7 at 1 ll. 13-14 (Redacted Rejoinder Testimony of Joel Wade); Transcript of*
6 *Proceedings ("TR") at 15 ll. 18-20 (Attorney for BMSC, Jay L. Shapiro, commenting*
7 *that "[i]t's the Company's position we don't have a problem with odors; we have a*
8 *problem with odor complaints.*"). After the public comment and evidence offered by
9 the Town demonstrated serious odor problems with respect to BMSC's operations,
10 BMSC appropriately recognized the odor problems and the need to remedy the causes
11 thereof. In response to a question posed by Administrative Law Judge Dwight D.
12 Nodes ("ALJ Nodes") regarding the odor problems, Robert Dodds ("Dodds"), President
13 of Algonquin Water Services,¹ stated that "I certainly believe there is an issue" and that
14 "customers are smelling odors." (*TR at 481 l. 21 through 482 l. 12*). Since the hearing
15 in this matter, BMSC has taken the initiative to remove the CIE Lift Station by entering
16 into a contract with McBride Engineering. (*See BMSC Closing Brief at 5 & n.2*). The
17 CIE Lift Station represented one of two major sources of contention for ratepayers and
18 the Town.
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20 Despite its acknowledgement of the odor problems and efforts to remedy at least
21 one cause of the odor problems, BMSC's Closing Brief characterizes the odors emitted
22 from its operations as mere "allegations regarding excessive odors," as if BMSC is
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¹ An affiliate of BMSC that provides operations, maintenance, administrative and general services to BMSC.

1 again taking the position that there are no odor problems. (*See BMSC Closing Brief at*
2 2-3). The Town believes that BMSC's position in its Closing Brief is outrageous and
3 demonstrates either BMSC's refusal to take concerns of ratepayers and the Town
4 seriously, or a disconnect between BMSC and its counsel with respect to BMSC's
5 position on the existence of odors. The record clearly demonstrates that BMSC has
6 acknowledged odor problems, and BMSC offered no evidence to rebut the public
7 comment or testimony of the Town's witnesses regarding the existence of odor
8 problems. Therefore, it is mind baffling that BMSC could now contend that the
9 existence of odors is a mere allegation.
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12 Regardless of the reasoning behind BMSC's waffling on the existence of odors,
13 its attempt to downplay the odor problems in its Closing Brief only underscores the
14 concerns of the Town that BMSC will not unilaterally resolve the odor problems absent
15 conditions imposed by the Commission regarding the completion of specific projects to
16 resolve the odor problems.² Not only does BMSC's Closing Brief amplify the
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19 ² The Town's fears were the subject of discussion between ALJ Nodes and Dodds during the
20 following colloquy:

21 ALJ Nodes: Well, Mr. Dodds, can you understand from -- if I am looking
22 at this from the perspective of the customers that are affected, the HOA and the
23 Town that has to deal with the customer complaints, once the company is granted
24 a rate increase, maybe the Company won't ignore the complaints, but there
25 certainly would not be the same level of urgency perhaps to the Company's
26 efforts to try to solve the odor problems.

27 So, I mean -- and this carries through, I think, to the Commission. I mean,
28 the Commission also has to be answerable to the ratepayers who are affected by
this rate case. So, you know, I don't know that there is an absolute measurement,
but I hope you can understand that there is a concern that if a rate increase is
passed without any other kind of remediation built into the order, that perhaps,
you know, there is not the same level of urgency that would exist at that point.

1 reasonableness of the Town's concern, but so does the position taken by BMSC's
2 counsel that "[i]t is time for the rest of the parties to stop managing BMSC's affairs."
3 (see *Ex. A attached hereto, email from Jay L. Shapiro dated June 19, 2006*). The
4 problem is that *the odor problems are BMSC's affairs*, and based on the public
5 comment, testimony of the Town's witnesses, and testimony of Dodds, BMSC has done
6 a poor job of managing the odor problems. Nevertheless, BMSC and/or its counsel
7 expect the Town, BHOA, and ratepayers to trust BMSC's representations that it will
8 resolve the odor problems despite its argument that the odor problems are mere
9 allegations. Without doubt, BMSC's Closing Brief demonstrates that the Town's
10 concerns are reasonable and that a conditioned rate increase is necessary to insure that
11 BMSC undertakes the projects necessary to resolve the odor problems and to protect
12 ratepayers from an overreaching public utility.

16 II. DISCUSSION

17 A. The odor problems are more than allegations.

18 BMSC's attempt to characterize the odor problems as mere "allegations" belittles
19 ratepayers, including those that took the time to submit public comments, and ignores
20 the evidence offered by the Town demonstrating the cause of the odor problems and
21 BMSC's own admission of odor problems. Simply put, BMSC's position in its closing
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25 Dodds: I can understand the concern. All I can respond is that, no, the
26 urgency will remain for the reasons I cited: One, if they're proper, prudent and
27 necessary, we definitely will carry them out; and answering the complaints on a
28 continuous basis takes up a tremendous amount of time. It's in our interest to
resolve the problems.

(*TR at 483 l. 8 through 484 l. 5*).

1 brief directly contradicts the testimony of BMSC's own representative, Dodds, that
2 "customers are smelling odors." (*TR at 481 l. 21 through 482 l. 12*). Furthermore,
3 BMSC cannot point to a single shred of evidence that it offered to rebut the public
4 comments or the evidence offered by the Town regarding the existence of serious odor
5 problems. Instead, BMSC appears to be reverting back to its initial position that "we
6 don't have a problem with odors; we have a problem with odor complaints." (*Id. at 15*
7 *ll. 18-20 (Opening statement of Jay L. Shapiro)*). Given the complete lack of evidence
8 supporting BMSC's position, the Commission should not give any weight to BMSC's
9 argument that the odor problems are simply allegations, and consider BMSC's
10 comments in its Closing Brief as a reflection of its attitude, or at least its counsel's
11 attitude, toward the valid concerns of ratepayers and the Town.
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15 **B. BMSC is in violation of applicable laws.**

16 Despite the public comments and testimony of the Town's witnesses regarding
17 the seriousness of the odor problems, BMSC contends that the odor problems do not
18 constitute violations of applicable laws without offering a legal analysis to demonstrate
19 the truth of its assertion. Rather than setting forth the language of the applicable laws
20 and then performing a legal analysis by applying the applicable laws to the facts of this
21 case, BMSC simply makes the assertion that because, at one time or another, other
22 regulatory agencies, or its own managers have not found any violations, BMSC must
23 not be in violation today. The Town demonstrated in its cross-examination of Marlin
24 Scott Jr. ("Scott"), utility engineer of the Commission, that it was unclear when
25 BMSC's system or even the CIE Lift Station or Boulders community had been
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1 evaluated for compliance with the applicable laws: Scott testified that “we count on
2 DEQ and the County to gave [sic] us their evaluation to see if the system is working in
3 compliance with the regulations,” but indicated that he did not “know of when they did
4 their inspection.” (*Id. at 629 l. 24 through 630 l. 6, 632 ll. 1-5*). Moreover, when Scott
5 was asked about the statutory obligation imposed by A.R.S. § 40-361(B), Scott testified
6 that “[i]f it’s a rule, I can’t recall if it’s a DEQ or County or an ACC Rule. I don’t
7 remember reading that rule.” (*TR at 629 ll. 11-22*). As to whether Scott evaluated
8 BMSC’s compliance with A.R.S. § 40-361(B), Scott stated “I’ve never inspected a
9 system or tried to implement a rule like that toward a utility, so I don’t think Staff can,”
10 (*id. at 638 ll. 8-14*). Lastly, Dodds, BMSC’s own policy witness, testified to the facts
11 sufficient to demonstrate that BMSC’s odor emissions violate A.R.S. § 40-334(B),
12 which prohibits differing levels of service between locations. (*See TR at 495 ll. 1-6*
13 (*admitting some parts of BMSC’s service area do not have odor problems*)).
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17 In contrast to the conclusory arguments of BMSC, the Town’s case is based on
18 the language of the applicable laws, the uncontested public comments and evidence
19 offered by the Town, and the testimony of Dodds to demonstrate that BMSC is not in
20 compliance with all applicable laws. First, the Town recognizes the following public
21 comments and evidence regarding odors and the effects thereof upon residents living
22 near the CIE Lift Station and Boulders community:
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- 25 • Buel Wetmore, who resides near the CIE Lift Station, described BMSC’s service
26 as follows: “[t]he result over the last three and a half years has been, one, raw
27 sewage running down the street when the system stops; two, raw sewage
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1 exploding from my toilet when the system is pressurized; number three, daily
2 odor punctuated by overwhelming stench when the system finally fails.” (*Id. at*
3 *46 ll. 20-25*). Mr. Wetmore described a daily pattern of odors from 7:00 a.m. to
4 9:00 a.m. and 4:00 p.m. to 7:00 p.m. (*Id. at 49 ll. 18-23*).

- 6 • Stanley Francom (“Francom”), public works superintendent of the Town,
7 testified that he personally experienced the odor problems caused by the CIE Lift
8 Station as recently as April 20, 2006. (*Id. at 277 ll. 7-23*). On that day Francom
9 “encountered a raw sewage odor, which odor [he] described as the smell of just
10 common sewage. It was not a hydrogen sulfide smell. It wasn’t that
11 objectionable as compared to hydrogen sulfide, but there was a pervasive smell
12 of raw sewage.” (*Id. ll. 12-16*). The odor was noticeable next to a residence
13 some 50-60 feet away from the CIE Lift Station. (*Id. ll. 17-20*).

- 16 • Intervenor Robert E. Williams (“Williams”), vice president of the North
17 Boulders Homeowners Association, described the problem as “an unpredictable
18 and offensive odor that emanates from the sewer system,” (*id. at 30 ll. 10-11, 31*
19 *ll. 16-17*), “a frequent and unpredictable nuisance,” (*id. at 32 ll. 11-12*), which
20 “has become such a nuisance at times that residents in parts of the Boulders and
21 other communities served by [BMSC] cannot entertain their guests, serve their
22 customers effectively, as in the case of the Boulders Resort, or enjoy their home
23 environment and fear for the valuation of their property,” (*id. at 32 l. 21 through*
24 *33 l. 1*).

- 27 • Marilyn Courier, a resident of the Boulders community, noted that the odor made
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1 it "impossible to work in the yard or enjoy our patios because the stench was
2 intolerable." (*Id. at 52 ll. 13-14*). At a lift station located near Boulder Drive,
3 Mrs. Courier described the odor she encountered on a recent visit as
4 "spectacular." (*Id. at 53 ll. 6-9*).

- 6 • Francom testified that the odors in the Boulders are mainly caused by two
7 conditions in the present BMSC system. The first condition is a long retention
8 time between the CIE Lift station and the discharge manholes in the Boulders
9 that allows the sewage to become septic, a condition that causes hydrogen sulfide
10 odors, (*id. at 283 l. 9 through 284 l. 21*), a condition confirmed by Carter
11 Burgess in a report addressing the odor problems communicated by the Town.
12 (*Ex. T-3 Ex. A at 6 ("At least 17,640 gallons . . . must be pumped from the CIE*
13 *lift station prior to exiting the force mains; resulting in a mean residence time in*
14 *excess of 2 hours."*)). BMSC has recognized the existence of septic conditions as
15 evidenced by its introduction of Thioguard into the BMSC system to prevent the
16 reaction that creates hydrogen sulfide. (*TR at 284 l. 22 through 285 l. 9*).
17 Nevertheless, because the sewage contains other odors besides hydrogen sulfide,
18 (*id. at 285 ll. 10 -20*), the Thioguard alone cannot solve the odor problems.

22 The comments of Mr. Wetmore, Francom, Williams, and Mrs. Courier cited herein
23 represent only a fraction of the public comment and evidence regarding the odor
24 problems, but are representative of the public comment, testimony, and conclusions
25 contained in the engineering reports prepared on behalf of the Town and BMSC
26 regarding the odor problems. (*See Town's Closing Brief at 3-12*).

1 Second, the Town sets forth the laws applicable to BMSC's operations and
2 facilities, specifically those laws applicable to odors, and applies the applicable laws to
3 the facts of this case:
4

- 5 • **A.R.S. § 40-361(B):** Under § 40-361(B), BMSC is obligated to "furnish and
6 maintain such service, equipment and facilities as will promote the safety, health,
7 comfort and convenience of its patrons" Mr. Wetmore, Williams, and Mrs.
8 Courier are patrons/ratepayers of BMSC, as are most of the individuals offering
9 public comment to the Commission, and stated, like most participating
10 ratepayers, that the odors emitted by BMSC's operations are a serious detriment
11 to their safety, health, comfort and convenience as residents within the BMSC
12 service area. It would be unreasonable to conclude that when residents cannot
13 use and enjoy their property as attested to by Williams and Mrs. Courier, that
14 BMSC is being attentive to its ratepayers' comfort and convenience. Likewise, it
15 would be unreasonable to conclude that Mr. Wetmore's comments regarding
16 sewage running down the streets, raw sewage exploding from his toilet, or daily
17 odor punctuated by overwhelming stench when the system finally fails do not
18 demonstrate a disregard for the comfort and convenience of BMSC ratepayers.
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20 Importantly, BMSC offered no evidence to rebut the public comments or the
21 evidence demonstrating that the odor problems do detrimentally "affect the
22 safety, health, comfort and convenience of its patrons." The lack of rebuttal
23 evidence is telling. Therefore, the only conclusion supported by the public
24 comments and evidence is that BMSC operates in violation of A.R.S. § 40-
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1 361(B) with respect to the CIE Lift Station and its operations within the Boulders
2 community.

- 3 • **A.R.S. § 40-334(B):** Under § 40-334(B), BMSC cannot “maintain any
4 unreasonable difference as to . . . service, facilities or in any other respect, either
5 between localities” The public comments and evidence prove that residents
6 near the CIE Lift Station and within the Boulders community experience
7 significant odor problems from BMSC’s operations. (*See supra* at 5-7). No
8 evidence suggests that other areas within the BMSC service area experience odor
9 problems on the same magnitude as those experienced near the CIE Lift Station
10 and within the Boulders community. Dodds even testified that some areas within
11 the BMSC service area do not experience odors. (*TR at 495 ll. 1-6*). The use and
12 enjoyment of property has been significantly diminished in areas with odor
13 problems as residents “cannot entertain their guests, serve their customers
14 effectively, as in the case of the Boulders Resort, or enjoy their home
15 environment and fear for the valuation of their property.” (*Id. at 32 l. 21 through*
16 *33 l. 1*). BMSC offered no evidence to the contrary. Such an uncontested
17 detrimental effect upon use and enjoyment of only some properties within the
18 BMSC service area constitutes an “unreasonable difference” as to service and/or
19 facilities between localities, and a violation of A.R.S. § 40-334(B).

- 20 • **Maricopa County Health Code Chapter II, § 2 Reg. 3(e):** The Maricopa
21 County Health Code provides that “[i]f, after investigation by the Department it
22 is determined that any treatment or disposal works . . . is creating a nuisance or a
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1 menace to public health, the owner shall make such changes in the plant or its
2 operation as are necessary to produce satisfactory results.” Maricopa County
3 Health Code Chapter II, § 2 Reg. 3(e). The uncontested public comment and
4 evidence in this case demonstrates that residents near the CIE Lift Station and
5 within the Boulders community are experiencing odors from BMSC’s operations
6 at such a high level that the use and enjoyment of their properties is severely
7 impaired. (*See, e.g., TR at 32 l. 21 through 32 l. 1*). It would be unreasonable to
8 conclude that when residents cannot use and enjoy their property as attested by
9 Mr. Williams and Mrs. Courier, that BMSC has not created a nuisance.
10 Likewise, it would be unreasonable to conclude that Mr. Wetmore’s comments
11 regarding sewage running down the streets, raw sewage exploding from his
12 toilet, or daily odor punctuated by overwhelming stench when the system finally
13 fails do not demonstrate a nuisance. BMSC even admitted that it receives
14 complaints regarding odors on a regular basis, (*see Exs. 7, 8, 9 (BMSC Responses*
15 *to Data Requests Regarding Odor Complaints) to Ex. T-5 (Surrebuttal Testimony*
16 *of Jonathan H. Pearson)*), but BMSC offered no evidence that the odors emitted
17 from its operations did not constitute a nuisance. Because it is uncontested that
18 the odors emitted from BMSC’s operations constitute a nuisance to property
19 owners near the CIE Lift Station and within the Boulders community, BMSC is
20 in violation of Maricopa County Health Code Chapter II, § 2 Reg. 3(e).

- 21 • **Maricopa County Air Pollution Control Regs. R. 320, § 300:** Under the
22 Maricopa County Air Pollution Control Regulations, BMSC is prohibited from
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1 “emit[ing] gaseous or odorous air contaminants from equipment, operations or
2 premises under his control in such quantities or concentrations as to cause air
3 pollution.” Maricopa County Air Pollution Control Regs. R. 320, § 300. Air
4 pollution includes “air contaminants . . . in sufficient quantities, which either
5 alone or in connection with other substances . . . are or tend to be injurious to
6 human, plant, or animal life, or causes damage to property, or *unreasonably*
7 *interferes with the comfortable enjoyment of life or property* of a substantial
8 part of a community.” *Id.* R. 100, § 200.10 (emphasis added). Uncontested
9 public comment and evidence demonstrates that the use and enjoyment of
10 property has been significantly diminished in areas with odor problems as
11 residents “cannot entertain their guests, serve their customers effectively, as in
12 the case of the Boulders Resort, or enjoy their home environment and fear for the
13 valuation of their property.” (*TR at 32 l. 21 through 32 l. 1*). It would be
14 unreasonable to conclude that when residents cannot use and enjoy their property
15 as attested to by Williams and Mrs. Courier, that BMSC has not interfered with
16 the comfortable enjoyment of life or property. Likewise, it would be
17 unreasonable to conclude that Mr. Wetmore’s comments regarding sewage
18 running down the streets, raw sewage exploding from his toilet, or daily odor
19 punctuated by overwhelming stench when the system finally fails do not
20 demonstrate that BMSC has not interfered with the comfortable enjoyment of life
21 or property. Again, BMSC offered no evidence to the contrary. As such, BMSC
22 is also violating Maricopa County Air Pollution Control Regs. R. 320, § 300.
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1 By walking through the forgoing analyses step-by-step, the Commission can see
2 that BMSC's reliance on the testimony of Scott, Dodds, and Joel Wade, do not even
3 come close to demonstrating that, in the face of the public comments and evidence
4 presented by the Town, BMSC is in compliance with all laws and regulations. BMSC
5 offered no actual evidence, except for conclusory and unsupported statements, that it is
6 in compliance with the laws cited herein. As such, the Commission should step in and
7 order BMSC to resolve the odor problems.
8

9
10 **C. The Town's recommendations are not vague.**

11 The Town's Closing Brief offers specific and concrete suggestions to resolve the
12 odor problems as testified by Francom and suggested by both the Carter Burgess and
13 LTS Reports. First, with respect to the CIE Lift Station, Francom testified that there are
14 two potential alternatives to resolve the CIE Lift Station odor problems: (1) replace the
15 CIE Lift Station; or (2) bypass the CIE Lift Station. (*TR at 334 l. 2-17*). BMSC has
16 confirmed that it has undertaken to implement the second alternative. As such, to insure
17 that BMSC completes the CIE Lift Station bypass as it has represented it will do, the
18 Town requests a condition be placed upon any rate increase granted to BMSC requiring
19 the completion of the CIE Lift Station bypass. As BMSC has already represented to the
20 Commission that it will complete the CIE Lift Station bypass, there would be no
21 prejudice or harm that would result from the imposition of such a condition.
22

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25 Second, with respect to the odor problems within the Boulders community,
26 Francom testified to two resolutions of the odor problems: (1) replace the gravity flow
27 lines with pressure lines, and/or (2) install fans and carbon filters to create a negative
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1 pressure filtration system within the sewer system between the discharge manhole and
2 the Boulders Wastewater Treatment Plant ("BWTP"). (*TR at 291 ll. 21-25, 334 l. 18*
3 *through 335 l. 11*). BMSC offered no evidence to refute the potential effectiveness of
4 either of these proposed solutions. In fact, BMSC's own commissioned study
5 performed by LTS endorses both of these proposals:

7 A redesign at this structure is recommended if turbulence could be reduced.
8 Reduced turbulence would keep the sulfides in solution to be treated by the
9 waste treatment facility. Even with reduced concentrations due to less
10 turbulence a fan generating negative pressures will still most likely be
11 needed at the Quartz and Boulder Drive location to prevent odors from
12 being forced out the local vent stacks.

13 (*Ex. A-6 Ex. 1 attachment F at 5; also admitted as Ex. T-1 Ex. B at 5*). Even Dodds
14 recognized that something had to be done:

15 ALJ Nodes: Okay. Back to – you have given kind of a time line, I guess,
16 for the CIE lift station. Briefly I want to go back to the wastewater
17 treatment plant and the issue along Boulders Drive that has been mentioned
18 throughout the hearing.

19 Do you have a similar estimate of when a decision could be
20 made with respect to that particular area?

21 Dodds: At this time, no, I do not, but I will make it a priority to have
22 our engineering staff examine the problem, identify what it is. But at the
23 moment I can't because we just have not studied it or I have not. I'm not
24 aware what we have done.

25 (*TR at 484 l. 22 through 485 l. 8*). As such, to insure that BMSC resolves the odor
26 problems within the Boulders community, the Town requests a condition be placed
27 upon any rate increase granted to BMSC requiring the replacement of the gravity flow
28 lines with pressure lines and/or installation fans and carbon filters to create a negative
pressure filtration system within the sewer system between the discharge manhole and

1 the BWTP with the goal of eliminating the negative pressure that inherently exists
2 within the existing sewer system in the Boulders community.

3
4 The Town's recommendations contained herein, as explained by Francom and
5 also discussed in the Town's Closing Brief, are anything but vague, and are in fact
6 extremely specific. Undeniably, the Commission has the authority to order BMSC to
7 comply with A.R.S. §§ 40-334(B) and 40-361(B):

8
9 When the commission finds that additions or improvements to or changes
10 in the existing plant or physical properties of a public service corporation
11 ought reasonably to be made, or that a new structure or structures should be
12 erected, to promote the security or convenience of its employees or the
13 public, the commission shall make and serve an order directing that such
changes be made or such structure be erected in the manner and within the
time specified in the order. If the commission orders erection of a new
structure, it may also fix the site thereof.

14 A.R.S. § 40-331(A). "[T]he regulatory powers of the Commission are not limited to
15 making orders respecting the health and safety, but also include the power to make
16 orders respecting comfort, convenience, adequacy and reasonableness of service"
17 *Ariz. Corp. Comm'n v. Palm Springs Util. Co.*, 24 Ariz. App. 124, 128, 536 P.2d 245,
18 249 (1975). While A.R.S. §§ 40-334(B) and 40-361(B) may be vague in terms of the
19 triggering point for a violation, there is no question that in this case the odor problems
20 have triggered a violation and the Commission has been charged with enforcing A.R.S.
21 §§ 40-334(B) and 40-361(B).
22
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24 To avoid the vagueness problems BMSC has attributed to A.R.S. §§ 40-334(B)
25 and 40-361(B), the Town has made specific suggestions that it believes will resolve the
26 odor problems. The Town even made the unprecedented offer to install one of these
27 proposed solutions on a test basis to demonstrate its effectiveness which was refused by
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1 BMSC. Because BMSC balked at the Town's offer, has not guaranteed to any party
2 that it will complete the CIE Lift Station bypass project or attempt to resolve the odor
3 problems within the Boulders community, the Town requests that the Commission
4 condition any rate increase upon the completion of the CIE Lift Station bypass, and the
5 replacement of the gravity flow lines with pressure lines and/or installation fans and
6 carbon filters to create a negative pressure filtration system within the sewer system
7 between the discharge manhole and the BWTP with the goal of eliminating the positive
8 pressure that inherently exists within the sewer system in the Boulders community. On
9 behalf of BMSC, Dodds testified that he would "have no trouble with a condition as
10 long as it's a condition that we can measure and meet." (*TR at 484 ll. 15-17*). The
11 Town has proposed conditions that are measurable, concrete, and attainable; BMSC
12 should have no objections to such conditions.

16 **III. CONCLUSION**

17 BMSC's operations emit odors that violate applicable laws and are detrimental to
18 the residents near the CIE Lift Station and within the Boulders community. The
19 Commission has the authority to order BMSC to remedy the problems. The Town
20 requests that the Commission do so by conditioning any rate increase upon the
21 completion of the CIE Lift Station bypass project and, within the Boulders community,
22 replacement of the gravity flow lines with pressure lines and/or installation fans and
23 carbon filters to create a negative pressure filtration system within the sewer system
24 between the discharge manhole and the BWTP with the goal of eliminating the positive
25 pressure that inherently exists within the sewer system in the Boulders community.
26
27
28

1 RESPECTFULLY SUBMITTED: September 5, 2006.

2
3 MOHR, HACKETT, PEDERSON, BLAKLEY
4 & RANDOLPH, P.C.

5
6 By 

7 Thomas K. Chenal
8 David W. Garbarino
9 Suite 155
10 7047 East Greenway Parkway
11 Scottsdale, Arizona 85254
12 Attorneys for the Town of Carefree

13 ORIGINAL and 13 COPIES
14 of the foregoing filed September 5,
15 2006 with:

16 Arizona Corporation Commission
17 Docket Control
18 1200 Washington Street
19 Phoenix, AZ 85007

20 COPIES of the foregoing hand-delivered
21 September 5, 2006 to:

22 The Honorable Dwight D. Nodes
23 Administrative Law Judge
24 Hearing Division
25 Arizona Corporation Commission
26 1200 Washington Street
27 Phoenix, AZ 85007

28 Keith Layton
Staff Counsel
Legal Division
Arizona Corporation Commission
1200 Washington Street
Phoenix, AZ 85007

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1 COPIES of the foregoing emailed
2 and mailed September 5, 2006 to:

3 Jay Shapiro
4 Patrick J. Black
5 FENNEMORE CRAIG
6 3003 North Central Avenue,
7 Suite 2600
8 Phoenix, AZ 85012
9 jshapiro@fclaw.com
10 Attorneys for Black Mountain Sewer Company

11 Daniel W. Pozefsky
12 Residential Utility Consumer Office
13 1110 West Washington Street,
14 Suite 220
15 Phoenix, AZ 85007
16 DanP@azruco.gov

17 COPIES of the foregoing mailed
18 September 5, 2006 to:

19 Robert E. Williams
20 Vice President
21 THE BOULDERS HOMEOWNERS ASSOCIATION
22 P.O. Box 2037
23 Carefree, AZ 85377

24 M.M. Shirtzinger
25 34773 N. Indian Camp Trail
26 Scottsdale, AZ 85262

27 
28

Exhibit A

DWG (David W. Garbarino)

From: SHAPIRO, JAY [JSHAPIRO@FCLAW.COM]
Sent: Monday, June 19, 2006 5:15 PM
To: Dan Pozefsky; klayton@azcc.gov
Cc: DWG (David W. Garbarino)
Subject: RE: The Town's Response to Staff's Alternative Recommendations for Use of Funds in the Hook-up Fee Account

Maybe I missed something but to my knowledge Staff is not making an alternative proposal--therefore there is no basis for the Town or RUCO to call another witness or offer an alternative proposal. Moreover, this is much ado about nothing--the Company will have a proposal ready to eliminate the CIE lift station in the very near future and has the funds to pay for it as needed. It is time for the rest of the parties to stop managing BMSC's affairs.

From: Dan Pozefsky [mailto:DanP@azruco.gov]
Sent: Monday, June 19, 2006 5:10 PM
To: SHAPIRO, JAY; RLW (Rebecca L. Walcott); klayton@azcc.gov; spurgroup@cox.net; Marylee Diaz Cortez
Cc: DWG (David W. Garbarino)
Subject: RE: The Town's Response to Staff's Alternative Recommendations for Use of Funds in the Hook-up Fee Account

Jay,

FYI -- RUCO recalls that the Judge also ordered Staff to provide the alternative proposal in writing. As I recall, we offered testimony on the stand regarding the hook up fees and given Staff's change of position we to intend to address it at tomorrow's hearing. I am giving you heads up and I can surmise your position from the response to the Town.

Dan

From: SHAPIRO, JAY [mailto:JSHAPIRO@FCLAW.COM]
Sent: Monday, June 19, 2006 4:47 PM
To: RLW (Rebecca L. Walcott); klayton@azcc.gov; Dan Pozefsky; spurgroup@cox.net
Cc: DWG (David W. Garbarino)
Subject: RE: The Town's Response to Staff's Alternative Recommendations for Use of Funds in the Hook-up Fee Account

The Company is prejudiced by the Town's delay in making this proposal and objects

-----Original Message-----

From: RLW (Rebecca L. Walcott) [mailto:rwalcott@mhplaw.com]
Sent: Mon Jun 19 15:27:19 2006
To: SHAPIRO, JAY; klayton@azcc.gov; dpozefsky@azruco.com; spurgroup@cox.net
Cc: DWG (David W. Garbarino)
Subject: The Town's Response to Staff's Alternative Recommendations for Use of Funds in the Hook-up Fee Account

Gentlemen:

Please find attached for your review and records is a copy of the Town of Carefree's Response to Staff's Alternative Recommendations for the Use of Funds in the Hook-up Fee Account. A hard copy has also been mailed.

8/28/2006

Thank you,

Rebecca

-----Original Message-----

From: RLW [mailto:rwalcott@mhplaw.com]

Sent: Monday, June 19, 2006 3:10 PM

To: RLW (Rebecca L. Walcott)

Subject: IKON DocSend files for you

This document was generated by IKON DocSend on the device #c00004759.

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www.fennemorecraig.com

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